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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF VOCATIONAL AND ADULT EDUCATION

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THE ASSISTANT SECRETARY

AUG 30 2002

Honorable Cesar Rey-Hernandez
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

FCC Secretary: Please
file under CC Docket No. 02-6
Pursuant to DA 03-1731,
a PN released on May 16, 2003

Dear Secretary Rey-Hernandez:

The purpose of this letter is to follow up on a meeting that various representatives of the Department had with you on August 15, 2002, and to inform you that the Office of Vocational and Adult Education of the United States Department of Education (Department) has approved the issuance of grant awards to the Puerto Rico Department of Education (PRDE) under the following programs for Federal fiscal year 2002: Vocational Education State Grants, Tech Prep Education, and America's Career Resource Network. However, we are issuing each of these awards with the Special Conditions that are referenced in the individual grant award documents and set forth in the enclosure to this letter.

While the Department has determined that the PRDE has demonstrated some progress in the administration of these programs, we remain very concerned about the need to more fully address cross-cutting issues that affect the operation of the programs, as well as the program-specific issues. Deputy Secretary William Hansen alerted PRDE to the Department's concerns in the letter, dated May 29, 2002, which designated PRDE a high-risk grantee, and stated that special conditions would be imposed at a later date, after giving PRDE the opportunity to submit a plan to address the concerns.

PRDE submitted a corrective action plan in response to the letter that outlined steps already taken and those to be taken to address the problems. As outlined in the corrective action plan, we recognize that your agency is committed to ensuring compliance with all of the requirements applicable to these programs. However, we are concerned about the magnitude of the administrative and other related problems that PRDE continues to have, which have been brought to your attention by this Department in various communications and of which you are well aware. Thus, because of these concerns, pursuant to 34 C.F.R. §80.12, the Department is imposing Special Conditions on these grant awards primarily with regard to fiscal and program accountability. The terms of these Special Conditions and the reasons for imposing them are detailed further in the enclosure. In addition, as you know, our Department is working with your agency in an attempt to resolve many of the cross-cutting and program-specific problems identified in various audits.

The PRDE must administer these awards in keeping with the applicable provisions of Federal law and regulations, and the Special Conditions attached to the grant award documents. As indicated in the Special Conditions, we are requiring quarterly reports for each program with regard to expenditures and progress in implementing the grant, and a quarterly report on your progress in implementing the corrective action plan that you submitted in response to Deputy Secretary Hansen's

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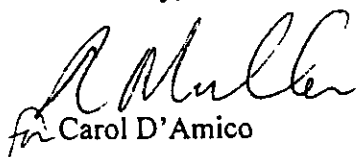
letter. We are allowing your agency to draw down only up to half of the total funding on each of these grant awards until we receive and review the first quarterly report and determine if it is satisfactory, and demonstrates substantial progress. If a report is not satisfactory, or does not show substantial progress, the Department may modify the Special Conditions or impose remedies such as one or more of the following: the denial of authority for PRDE to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services, or a combination of those remedies. We will consider "substantial progress" to have been made if the report demonstrates that there are sufficient results and steady progress at each quarterly reporting point, so that by the end of the twelve-month period ending on June 30, 2003, PRDE will have carried out all projected project activities and met all program objectives and goals in accordance with all applicable requirements.

At the meeting on August 15, 2002, Department officials discussed with you that the Special Conditions include PRDE's use of an "independent" third party to monitor and provide an on-going assessment of the implementation of Department programs in Puerto Rico. In this regard, I would like to reiterate the following key statements made by Department officials at the meeting: (1) that the inclusion of an independent third party will be one of the most important components of our new agreement; and (2) that the third party will not take over or operate PRDE's programs, but will serve as a resource for objective and more extensive monitoring and technical assistance on the reform of Federal program operation and implementation in your agency. On the basis of discussions and your submission of requested information after the meeting, we understand that your agency is planning to or has entered into other contracts to help reform your system. Your agency is also implementing a new Internal Audit Unit about which you sent some information. We will make an effort to ensure that the independent third party will build on and not duplicate the activities under these other efforts.

While we have been pleased with the dedication of you and your staff in your efforts to address some of the problem areas, much work remains to be done. We know that you share our view that meeting these requirements and standards is critical to ensuring positive educational outcomes for all children in Puerto Rico so that no child is left behind.

We will work with your agency to monitor progress in meeting the applicable requirements of the grant awards, including the Special Conditions, while also working with other Department of Education program offices to ensure that PRDE adheres to both fiscal and programmatic accountability standards. We appreciate your personal attention in giving these matters their high priority.

Sincerely,


for Carol D'Amico

Enclosure

Enclosure

Commonwealth of Puerto Rico – Special Conditions

PREAMBLE: These special conditions are imposed on the following Puerto Rico Department of Education's program grants for Federal fiscal year 2002: Vocational Education State Grants, Tech Prep Education and America's Career Resource Network. These program grant awards from the U.S. Department of Education (Department) to the Puerto Rico Department of Education (PRDE) are made in accordance with the Department's regulations governing "high risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that the PRDE award is expended in accordance with applicable legal requirements and with appropriate fiscal accountability measures and management practices and controls.

I. EXPLANATION OF HIGH-RISK STATUS

Under the authority of the Education Department General Administration Regulations (EDGAR), 34 CFR §80.12, the Department has determined that PRDE is a "high-risk" grantee for purposes of these grant awards because of problems in PRDE's fiscal and program accountability and related areas. Our conclusion is based on the following findings:

- A. Puerto Rico has not been in compliance with the Single Audit Act. Over a period of many years, PRDE has submitted its single audits significantly late. While some progress is being made, PRDE continues to be late with these submissions.
- B. The single audits of PRDE have consisted of many findings that show areas that need significant improvements. We are working with PRDE officials in getting additional information in connection with findings made by PRDE auditors to resolve the FFY 1997, 1998, 1999, and 2000 single audits and audits before FFY 1997.
- C. The Deputy Secretary's letter dated May 29, 2002 outlined many problem areas with PRDE's administration of its federally funded programs.
- D. While the corrective action plan aims to address many problem areas, the statements in the plan along with statements of officials from PRDE confirm that there are many problem areas to be addressed.
- E. Based on the audits of the US Department of Education, Office of Inspector General, including Audit Control Nos.: A0190006 A0190007 A01A0004, A02B0012, and A02B0014, certain agencies of Puerto Rico have been found to have systemic financial weaknesses such as: (a) failure to adhere to procurement regulations and procedures, and (b) lack of proper internal controls necessary to safeguard Federal funds. These actions affected grant funds awarded by the Department to PRDE.
- F. The actions leading to the indictments of the former Secretary of Education of Puerto Rico and other associated individuals showed the lack of proper controls to ensure the appropriate handling of Federal funds and other funds that were to be spent on appropriate education purposes.

II. SPECIAL CONDITIONS

A. Oversight Agent

All Department grant recipients are required to provide assurances that grant funds are being spent according to program and legislative requirements. The Department relies on these assurances to approve grant applications. Due to the high-risk status of PRDE and the conditions that contributed to that status, PRDE shall provide the Department timely confirmation of progress on its corrective action plans presented to the Department on June 27, 2002, and of appropriate expenditures through the services of an independent oversight agent that will provide extra monitoring of its expenditures and progress on the plan. The Agent will be selected by PRDE with the approval of the Department in a fair and competitive process consistent with applicable procurement procedures. The Agent will be paid from administrative funds from appropriate federally funded programs. The Department will work with PRDE in developing a procurement request for proposals soliciting responses from prospective agents. Selection criteria for the oversight Agent will include a proposal submitted by the prospective Agent as to methods to be used in satisfying the responsibilities of the agent. Responsibilities of the Agent will include:

1. Timely independent, and reliable monitoring of the implementation of fiscal and programmatic management improvements conducted by PRDE including those under PRDE's corrective action plan.
2. Timely independent, and reliable monitoring of the expenditure of Department funds by PRDE including items listed in section II.B, *Reporting Requirements: Liquidations and Purpose of Expenditures*, below.
3. Filing quarterly reports with the Department, and the Secretary of PRDE concerning the status and progress of items one and two above.

The work of the Agent shall be covered in a contract developed by PRDE and approved by the Department that will build on, and not duplicate, the work PRDE is doing with other contracts to help reform the PRDE system, and with the work of the new Internal Audit Office that is being established within PRDE. To help ensure that there is no duplication, PRDE or the Internal Audit Office will submit to the Department more information on the proposed monitoring activities of the Internal Audit Office.

The Agent must have full access to all PRDE staff, all financial transaction records, program administration reports, reports generated by PRDE's Internal Audit Office, contractor-related documentation, and any other documentation pertaining to programs using funds allocated to PRDE by the Department.

The Agent must be in place within six months from the awarding of the grants. The Agent will perform its duties until such time as proper internal controls are in place and functioning for a period sufficient to assure the Department that they will continue to function and that they are effective in protecting Federal funds.

B. Reporting Requirements: Liquidations and Purpose of Expenditures

The Department will allow PRDE to draw down grant funds only up to fifty percent of the funds available in each of the grant programs until the documentation requested below for each program is submitted and approved as acceptable by the Department. The enclosed awards make available the first installment of your State Vocational Education grant and your State's entire Tech Prep and America's Career Resource Network grants. This documentation must show that the funds are being spent for allowable purposes, that sufficient progress is being made in the program, and that the funds drawn down are being spent in a timely manner with appropriate certifications. These expenditures and the documentation will also be subject to further monitoring, auditing, and review. PRDE will provide the following (see also section IV B below):

1. A detailed quarterly report for each program on the administration of the program by PRDE, the expenditures made by PRDE in the program that will satisfy the accountability needs of the Department, and descriptions of the progress of each significant aspect of the program at school, "district" and PRDE levels. Expenditures (or liquidations) may be grouped by category (e.g., purchase of computers, professional development, etc.) but they must be in sufficient detail for the Department to match against the program application or spending plan, if applicable, and allow the Department to determine the allowability of the expenditures (or liquidation). The descriptions on progress must also provide enough detail on program activities to determine if sufficient progress is being made in the program. The reports shall also include the information required in section II D below.
2. A certification signed by an authorized official of PRDE, attesting, under penalty of Federal law, to the accuracy and completeness of the report, including verification that all of the expenditures are being made for authorized purposes under the program.
3. PRDE shall consider adopting a "transparent" budgeting and expenditure reporting system that would be readily available to the public, the Agent, and the Department and its representatives so that all of these parties can easily understand the expenditures that are planned and carried out under each of the federally-funded grant programs. In each of the quarterly reports, PRDE shall report on its consideration of and progress in adopting such a system.

The reports and certifications must be submitted no later than two weeks after the end of each quarter (for example, the first quarter ends on December 31, 2002, so the first report will be due on January 14, 2003). If a report is not timely or is not considered acceptable (for example, it does not show substantial progress as set forth in the cover letter), it may result in one or more remedies including the following for that program: the lack of authority for PRDE to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services.

C. Single Audits

PRDE shall submit to the Department the delinquent single audit for FFY 2001 by August 30, 2002. All single audits required thereafter by the independent auditors shall be completed and the report published within nine months after the end of each fiscal year as required by the Single Audit Act of 1984 and subsequent amendments.

D. Resolving Audit Findings

1. PRDE shall report to the Department, as part of the quarterly reports, on progress towards resolving applicable audits on all matters affecting funds under these grant programs. Including the resolution of all pending findings resulting from single audits and from findings made by the Internal Audit Office
2. If any other federal agencies issue findings on cross-cutting issues (e.g., procurement, property, financial management) affecting the administration of these program funds, or that cover funds under this grant program, PRDE shall promptly report such findings to the Department and outline the corrective actions to be taken.

E. Prompt Access to Records

PRDE shall promptly provide the Department or its representatives any requested records and information.

F. Failure to Comply with Conditions

In addition to the remedies described in Section II B 3 above, if the U.S. Department of Education determines that the PRDE has not made substantial progress in meeting the objectives of the program, or has not met program requirements or the Special Conditions contained in paragraphs A-F above, then the U.S. Department of Education may consider not continuing the grant or taking further enforcement action steps, or apply additional conditions such as the following:

1. PRDE would receive no further funds under this grant award or only on a reimbursement basis; and
2. PRDE would contract with a third party, who must be approved by the U.S. Department of Education, to provide the services or financial management under this grant award. The third party would, at a minimum, assist in preparing the vouchers to be submitted to the U.S. Department of Education for reimbursement, and will verify their accuracy and legitimacy as an appropriate expenditure under this grant award.

III. OTHER TERMS

A. Enforcement

If PRDE fails to meet any of the above special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

All reports that are required to be submitted by PRDE to the Department under these special conditions shall be submitted to:

Maurice James
Acting Director, Division of High School, Postsecondary and Career Education
Office of Vocational and Adult education
U.S. Department of Education
400 Maryland Avenue, S.W.
Switzer Building, Room 4317
Washington, DC 20202-7324

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of the above special conditions by contacting the Department and stating reasons why PRDE believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as PRDE meets, to the Department's satisfaction, the conditions mentioned above.

Dated: AUG 30 2002